



# Criminal Defense Attorneys of Michigan

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The Criminal Defense Attorneys of Michigan offer the following comments regarding indigent defense reforms:

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1. The Commission and its report appropriately approached reform from the standpoint of the Defendant, not the defender. While everyone recognizes that the defense role is under-resourced in virtually every facet, and that needs to change, changes must be tied to what is necessary for the Defendant to get effective counsel, not just additional resources for additional resources' sake or to make defense attorneys' lives better.

2. Effective assistance is best assured by reforms that actualize the ABA 10 Principles, EACH of which is an important part to the "whole." We didn't discuss the 11th Principle, which is a SBM add-on, probably because it is largely irrelevant except where a Public Defender Office exists, which is the rare exception in Michigan, and not the recommendation of the Commission.

3. There is no one-size-fits-all model for state-wide reform. What may work best in one area of the State may be unworkable or inappropriate elsewhere. Reform should seek to work within local customs and practices, provided that those customs and practices are consistent with the 10 Principles and can be effectively monitored and measured against those Principles. The Commission in its report, and the legislation before the House, address this issue appropriately.

4. State-centered oversight should be limited to that which is necessary to monitor and measure and otherwise confirm adherence to the 10 Principles and to any rules/regulations put in place to implement the Principles. Creating performance measures without providing some oversight to assure they are being followed would put Michigan right back where we are now.

5. Resource shortfalls that prevent effective assistance include (i) lack of adequate compensation for defenders, causing them either to have too many cases or to give what few cases they take short shrift in favor of retained cases that pay the bills; (ii) in too many instances, inadequate access to basic tools like a readily accessible, functional and appropriately updated library; (iii) lack of access, where necessary, to investigators, experts, and similar consultants; (iv) lack of adequate training and CLE.

Resource shortfalls are particularly acute when measured against the resources available to prosecutors: (i) steady salary and benefits, and support staff; (ii) publically funded library and other research opportunities; (iii) professional investigators in the form of police

agencies, labs, forensic experts, and private experts paid with public funds when necessary; (iv) regular training and CLE paid with public funds.

A major aspect of reform, then, should be NOT to reduce funding for law enforcement but rather to increase funding for the defense function so as to bring parity and allow EACH role to function effectively. "Parity" does not mean dollar-for-dollar equality, because, for one thing, prosecutors' offices have roles and functions that may not have a corresponding defender role/function (e.g. prosecutors handle forfeiture matters, paternity cases and child-support enforcement, outside of the criminal justice system). However, there should be adequate funding of the defense role in connection with those necessary functions and activities that prosecutors and defense attorneys share--investigation, research, staff support, training, basic compensation, etc.--so as to allow each to effectively fulfill their respective roles. Again, the legislation before the House, and the Commission's findings, provide a mechanism to evaluate access to resources in a given system and a pathway to greater access where it is needed most.

6. A critical starting point for reform is caseload management, i.e. defining what would be an excessive caseload if the Principles are to be honored. From that, adequate funding can be measured. And from those two points, assuming adequate training and appropriate matching of a defender (in terms of training and experience) to cases, achieving most of the remaining Principles follows almost as a matter of course.

7. Independence of the defender system (whatever "system" is adopted in a given area) also is a critical component. "Independence" means independence from political influence, or from judicial oversight beyond that which the judiciary utilizes with retained counsel. The Committee observed that this does NOT mean judges need to cede control of their dockets or muzzle themselves when it comes to their opinions of assigned counsel, but they should not be the "deciders" of who receives assignments or how they are compensated.

Thank you for the opportunity to comment on this critically important aspect of the criminal justice system.

James R. Samuels, President  
Criminal Defense Attorneys of Michigan